

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² MEMX LLC (“MEMX” or the “Exchange”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend the Exchange’s fee schedule applicable to Members³ (the “Fee Schedule”) pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately.

A notice of the proposed rule change for publication in the Federal Register is provided as Exhibit 1. The text of the proposed rule change is provided in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by Exchange staff pursuant to authority delegated to it by the Board of Directors of the Exchange (the “Board”). Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the proposed rule change.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to: (i) adopt a reduced fee for executions of Retail Orders⁴ in securities priced at or above \$1.00 per share that remove liquidity from the Exchange; (ii) modify the Liquidity Provision Tiers by eliminating the current Liquidity Provision Tier 1 and increasing the rebate for the current Liquidity Provision Tier 2, which will be renamed Liquidity Provision Tier 1; (iii) modify NBBO Setter Tier 1 by increasing the additive rebate that would apply to a qualifying Member's executions of certain transactions, eliminating the additive rebate that would apply to a qualifying Member's executions of other transactions, and modifying the required criteria under such tier; (iv) modify the Tape B Volume Tier 1 by modifying the criteria under such tier; and (v) modify the Displayed Liquidity Incentive (DLI) Tiers by increasing the rebate and modifying the criteria under Displayed Liquidity Incentive Tier 1.⁵

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a

⁴ A "Retail Order" means an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. See Exchange Rule 11.21(a).

⁵ The Exchange initially filed the proposed Fee Schedule changes on September 30, 2024 (SR-MEMX-2024-37). On October 2, 2024, the Exchange withdrew that filing and submitted this proposal.

number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 15.6% of the total market share of executed volume of equities trading.⁶ Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents approximately 2% of the overall market share.⁷ The Exchange in particular operates a “Maker-Taker” model whereby it provides rebates to Members that add liquidity to the Exchange and charges fees to Members that remove liquidity from the Exchange. The Fee Schedule sets forth the standard rebates and fees applied per share for orders that add and remove liquidity, respectively. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, which provides Members with opportunities to qualify for higher rebates or lower fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Removed Retail Volume Fee

The Exchange currently charges a standard fee of \$0.0030 per share for executions of orders in securities that remove liquidity from the Exchange (such orders, “Removed Volume”). The Exchange now proposes to adopt a reduced fee of \$0.0028 per share for executions of Retail Orders in securities priced at or above \$1.00 per share that

⁶ Market share percentage calculated as of September 30, 2024. The Exchange receives and processes data made available through consolidated data feeds (i.e., CTS and UTDF).

⁷ Id.

remove liquidity from the Exchange (such orders, “Removed Retail Volume”).⁸ As proposed, executions of Removed Retail Volume in securities priced below \$1.00 per share will be charged a fee of 0.28% of the total dollar value of the transaction, which is the same fee that is currently charged for all such executions.

The purpose of reducing the fee for executions of Removed Retail Volume is to incentivize Members to submit additional liquidity-removing Retail Orders to the Exchange, thereby contributing to a deeper and more liquidity market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. The Exchange notes that the proposed lower fee for executions of Removed Retail Volume (i.e. \$0.0028) is competitive with the fees charged for executions of liquidity-removing retail orders charged by other exchanges.⁹

Liquidity Provision Tiers

The Exchange currently provides a base rebate of \$0.0015 per share for executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange (such orders, “Added Displayed Volume”). The Exchange also currently offers Liquidity Provision Tiers 1-6 under which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required volume criteria for each such tier. The Exchange now proposes

⁸ The Exchange notes that it currently provides free executions (i.e., the Exchange charges no fee and provides no rebate) for executions of Retail Orders with a time-in-force (“TIF”) instruction of Day, Good-‘til-Time (“GTT”), or Regular Hours Only (“RHO”) that remove liquidity from the Exchange upon entry into the System. It is not proposing to change that pricing as a part of this proposal and as such, this proposal shall only apply to Retail Orders with a TIF of Immediate-or-Cancel (“IOC”) or Fill-or-Kill (“FOK”).

⁹ See, e.g., the Cboe EDGX Exchange, Inc. equities trading fee schedule (available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/), indicating a fee of \$0.0030 per share for executions of retail orders that remove liquidity, and the MIAX Pearl Equities fee schedule (available at <https://www.miaxglobal.com/markets/us-equities/pearl-equities/fees>), indicating a fee of \$0.00285 per share for executions of retail orders that remove liquidity.

to modify the Liquidity Provision Tiers by eliminating the current Liquidity Provision Tier 1, deleting a footnote associated with the current Liquidity Provision Tier 1 in the Exchange's Fee Schedule, and re-numbering the existing Liquidity Provision Tiers 2-6 as Liquidity Provision Tiers 1-5 (hereinafter referred to as such). The applicable rebates and required criteria under Liquidity Provision Tiers 1-5 would remain unchanged, except for the rebate provided under the renamed Liquidity Provision Tier 1, which the Exchange is proposing to increase, as further described below.

First, with respect to the existing Liquidity Provision Tier 1, the Exchange currently provides an enhanced rebate of \$0.0034 per share for executions of Added Displayed Volume in securities priced at or above \$1.00 for Members that either: (1) have an ADAV¹⁰ (excluding Retail Orders) that is equal to or greater than 0.50% of the TCV,¹¹ or (2) a Step-Up ADAV¹² from June 2024 (excluding Retail Orders) that is equal to or greater than 0.07% of the TCV in securities priced at or above \$1.00 per share and an ADAV that is equal to or greater than 0.20% of the TCV in securities priced at or above \$1.00 per share and a Remove ADV¹³ that is equal to or greater than 0.45% of the TCV. The Exchange now proposes to eliminate Liquidity Provision Tier 1, as the Exchange no longer wishes to, nor is it required to, maintain such tier.

¹⁰ As set forth on the Fee Schedule, "ADAV" means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis, and "Displayed ADAV" means ADAV with respect to displayed orders.

¹¹ As set forth on the Fee Schedule, "TCV" means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

¹² As set forth on the Fee Schedule, "Step-Up ADAV" means ADAV in the relevant baseline month subtracted from current ADAV.

¹³ As set forth on the Fee Schedule, "Remove ADV" means ADV with respect to orders that remove liquidity.

With respect to the newly re-numbered Liquidity Provision Tier 1,¹⁴ the Exchange currently provides an enhanced rebate of \$0.0033 per share for executions of Added Displayed Volume in securities priced at or above \$1.00 per share for Members that qualify for such tier by achieving either: (1) an ADAV (excluding Retail Orders) that is equal to or greater than 0.40% of the TCV, or (2) an ADAV that is equal to or greater than 0.30% of the TCV in securities priced at or above \$1.00 per share and a Non-Displayed ADAV¹⁵ that is equal to or greater than 6,000,000 shares. The Exchange now proposes to increase the rebate for executions of Added Displayed Volume under Liquidity Provision Tier 1 to \$0.0034 per share. The Exchange is not proposing to change the criteria required to qualify for renamed Liquidity Provision Tier 1. The Exchange is also not proposing to change the rebate for executions of orders in securities priced below \$1.00 per share under such tier.

The tiered pricing structure for executions of Added Displayed Volume under the Liquidity Provision Tiers provides an incremental incentive for Members to strive for higher volume thresholds to receive higher enhanced rebates for such executions and, as such, is intended to encourage Members to maintain or increase their order flow, primarily in the form of liquidity-adding volume, to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all Members and market participants. The Exchange believes that the Liquidity Provision Tiers, as modified by the proposed

¹⁴ The pricing for Liquidity Provision Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description “Added displayed volume, Liquidity Provision Tier 1” with a Fee Code of “B1”, “D1” or “J1”, as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

¹⁵ As set forth on the Fee Schedule, “Non-Displayed ADAV” means ADAV with respect to non-displayed orders (including orders subject to Display-Price Sliding that receive price improvement when executed and Midpoint Peg orders).

changes described above, reflect a reasonable and competitive pricing structure that is right-sized and consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity. Specifically, the Exchange believes that, after giving effect to the proposed changes described above, the rebate for executions of Added Displayed Volume provided under each of the Liquidity Provision Tiers 1-5 remains commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that each such tier is designed to achieve.

NBBO Setter Tier 1

The Exchange currently offers NBBO Setter Tier 1 under which a Member may receive an additive rebate of \$0.0002 per share for a qualifying Member's executions of Added Displayed Volume (other than Retail Orders) in securities priced at or above \$1.00 per share that establish the NBBO and have a Fee Code B¹⁶ (such orders, "Setter Volume"), and an additive rebate of \$0.0001 per share for executions of Added Displayed Volume (other than Retail Orders) that do not establish the NBBO (i.e., Fee Codes D and J)¹⁷ by achieving: (1) an ADAV with respect to orders with Fee Code B that is equal to or greater than 5,000,000 shares; or (2) an ADAV with respect to orders with Fee Code B that is equal to or greater than 2,000,000 shares and an ADAV in securities priced at or above \$1.00 per share (excluding Retail Orders) that is equal to or greater

¹⁶ The Exchange notes that orders with Fee Code B include orders, other than Retail Orders, that establish the NBBO.

¹⁷ The Exchange notes that orders with Fee Code J include orders, other than Retail Orders, that establish a new BBO on the Exchange that matches the NBBO first established on an away market. Orders with Fee Code D include orders that add displayed liquidity to the Exchange but that are not Fee Code B or J, and thus, orders with Fee Code B, D or J include all orders, other than Retail Orders, that add displayed liquidity to the Exchange.

than 0.30% of the TCV in securities priced at or above over \$1.00 per share. The Exchange now proposes to modify NBBO Setter Tier 1 by increasing the additive rebate that would apply to a qualifying Member's executions of Setter Volume (i.e. Fee Code B), eliminating the additive rebate that would apply to a qualifying Member's executions of Added Displayed Volume (other than Retail Orders) that have a Fee Code of D or J, and modifying the required criteria under such tier.

First, the Exchange proposes to increase the additive rebate under NBBO Setter Tier 1 to \$0.0003 per share for a qualifying Member's executions of Added Displayed Volume with a Fee Code of B. Additionally, the Exchange proposes to eliminate the additive rebate of \$0.0001 per share for a qualifying Member's executions with a Fee Code of D or J, and as such, the additive rebate under NBBO Setter Tier 1 as proposed will only apply to a qualifying Member's executions of Added Displayed Volume with a Fee Code of B. The Exchange notes that when the NBBO Setter Tier was originally implemented by the Exchange, the additive rebate similarly only applied to executions with a Fee Code B,¹⁸ and as such, the purpose of eliminating the additive rebate is to revert back to the former application, as well as for business and competitive reasons, as the Exchange believes the elimination of such additive rebate would allow the Exchange to focus on incentivizing Setter Volume with a higher rebate while also decreasing the Exchange's expenditures with respect to the Exchange's transaction pricing, which would enable the Exchange to redirect future resources and funding into other incentives and tiers intended to incentive increased order flow.

¹⁸ See Securities Exchange Act Release No. 94394 (March 10, 2022), 87 FR 14923 (March 16, 2022) (SR-MEMX-2022-01).

Second, the Exchange is proposing to modify the required criteria under NBBO Setter Tier 1. As noted above, currently, a Member qualifies for such tier by achieving (1) an ADAV with respect to orders with Fee Code B that is equal to or greater than 5,000,000 shares; or (2) an ADAV with respect to orders with Fee Code B that is equal to or greater than 2,000,000 shares and an ADAV in securities priced at or above \$1.00 per share (excluding Retail Orders) that is equal to or greater than 0.30% of the TCV in securities priced at or above over \$1.00 per share. Now, the Exchange proposes to modify the required criteria under NBBO Setter Tier 1 such that a Member would now qualify for such tier by achieving an ADAV with respect to orders with a Fee Code B that is equal to or greater than 0.05% of the TCV. Thus, such proposed change modifies the Fee Code B ADAV criteria in the first alternative from a share-based ADAV to a percentage of the TCV ADAV, and eliminates the second alternative criteria altogether.

The Exchange believes that the proposed modified criteria provides an incremental incentive for Members to strive for higher ADAV in NBBO setting orders (i.e. Fee Code B) on the Exchange to receive the additive rebate for qualifying executions of Added Displayed Volume under such tier, and thus, it is designed to encourage Members that do not currently qualify for such tier to increase their overall orders that add liquidity to the Exchange. The Exchange also believes that the criteria change reflects a reasonable and competitive pricing structure that is right-sized and consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity. The Exchange believes that the proposed modified criteria would further incentivize increased order flow to the Exchange, thereby contributing to a deeper and more liquid market to the benefit of all Members.

Tape B Volume Tier

The Exchange currently offers Tape B Volume Tier 1 under which a Member may receive an additive rebate of \$0.0002 per share for executions of Added Displayed Volume (excluding Retail Orders) in Tape B Securities (such orders, “Tape B Volume”) by achieving a Tape B ADAV that is equal to or greater than 0.30% of the Tape B TCV (excluding Retail Orders).¹⁹ Now, the Exchange proposes to modify the required criteria under such tier such that a Member would qualify for such tier by achieving a Tape B ADAV that is equal to or greater than 0.25% of the Tape B TCV (excluding Retail Orders).

The purpose of modifying the required criteria is for business and competitive reasons, as the Exchange believes that such changes would facilitate Members to meet such tier by lowering the Tape B TCV requirement. The Exchange believes that the proposed changes would incentivize Members to submit additional order flow in Tape B Securities, thereby promoting price discovery and market quality on the Exchange.

Displayed Liquidity Incentive (“DLI”) Tiers

The Exchange currently offers DLI Tiers 1 and 2 under which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required criteria for each such tier. The DLI Tiers are designed to encourage Members, through the provision of an enhanced rebate for executions of Added Displayed Volume, to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day (i.e., through the applicable quoting

¹⁹ The pricing for the Tape B Volume Tier is referred to by the Exchange on the Fee Schedule under the description “Tape B Volume Tier” with a Fee Code of “b” to be appended to the otherwise applicable Fee Code assigned by the Exchange on the monthly invoices for qualifying executions.

requirement²⁰) in a broad base of securities (i.e., through the applicable securities requirement²¹), thereby benefitting the Exchange and investors by providing improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the NBBO in a broad base of securities and committing capital to support the execution of orders.²² Now, the Exchange proposes to modify DLI Tier 1 by modifying the required criteria and increasing the rebate for executions of Added Displayed Volume under such tier.

Currently, under DLI Tier 1, the Exchange provides a rebate of \$0.0031 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an NBBO Time of at least 25% in an average of at least 1,000 securities per trading day during the month; and (2) an ADAV equal to or greater than 0.10% of the TCW. Now, the Exchange proposes to modify the required criteria under DLI Tier 1 such that a Member would qualify for such tier by achieving: an NBBO time of at least 50% in an average of at least 1,000 securities per trading day during the month.²³ The Exchange

²⁰ As set forth on the Fee Schedule, the term “quoting requirement” means the requirement that a Member’s NBBO Time be at least 25%, and the term “NBBO Time” means the aggregate of the percentage of time during regular trading hours during which one of a Member’s market participant identifiers (“MPIDs”) has a displayed order of at least one round lot at the national best bid or the national best offer.

²¹ As set forth on the Fee Schedule, the term “securities requirement” means the requirement that a Member meets the quoting requirement in the applicable number of securities per trading day. Currently, each of DLI Tiers 1 and 2 has a securities requirement that may be achieved by a Member meeting the quoting requirement in the specified number of securities traded on the Exchange.

²² See the Exchange’s Fee Schedule (available at <https://info.memxtrading.com/fee-schedule/>) for additional details regarding the Exchange’s DLI Tiers. See also Securities Exchange Act Release No. 92150 (June 10, 2021), 86 FR 32090 (June 16, 2021) (SR-MEMX-2021-07) (notice of filing and immediate effectiveness of fee changes adopted by the Exchange, including the adoption of DLI).

²³ The Exchange is also proposing to amend the definition of “quoting requirement” under the Definitions and Notes section under the DLI Tiers pricing table on the fee schedule in light of this proposed increase in the NBBO time required to achieve DLI Tier 1. Specifically, the Exchange is proposing that the term quoting requirement shall now mean the percentage of NBBO Time

also proposes to increase the rebate for a qualifying Members' executions of Added Displayed Volume under DLI Tier 1 from \$0.0031 per share to \$0.0034 per share.²⁴

The purpose of increasing the quoting requirement under DLI Tier 1 is intended to encourage Members to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day (i.e., through the applicable quoting requirement) in a large number of securities, thereby benefitting the Exchange and investors by providing improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the NBBO. The purpose of removing the former criteria (2) under DLI Tier 1 is intended to make it easier for Members to meet such tier and incentivize increased order flow to the Exchange in the form of orders at the NBBO. The purpose of increasing the rebate is similarly to incentivize increased order flow to the Exchange, including in the form of orders at the NBBO, thereby contributing to a deeper and more liquid market to the benefit of all market participants. The Exchange is not proposing to change the rebates provided under such tiers for executions of orders in securities priced below \$1.00 per share.

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,²⁵ in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,²⁶ in particular, in that it provides for the equitable allocation of reasonable dues,

required under the relevant DLI Tier criteria (i.e., rather than including the numeric value of the required NBBO Time in the definition).

²⁴ The pricing for DLI Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description "Added displayed volume, DLI Tier 1" with a Fee Code of Bq1, Bq1 or Jq1, as applicable.

²⁵ 15 U.S.C. 78f.

²⁶ 15 U.S.C. 78f(b)(4) and (5).

fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange operates in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁷

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange’s transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure designed to encourage market participants to strive for higher volume on the Exchange, which the Exchange believes would promote price

²⁷ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

discovery and enhance liquidity and market quality on the Exchange to the benefit of all Members and market participants.

The Exchange believes that its proposal to charge a reduced fee for executions of Removed Retail Volume is reasonable, equitable, and not unfairly discriminatory. Specifically, the Exchange believes such proposal is reasonable, as it is reasonably designed to incentivize Members to submit additional Retail Orders to the Exchange, thereby contributing to a deeper and more liquidity market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. Thus, the Exchange believes the proposal reflects a reasonable attempt to deepen liquidity on the Exchange, particularly as the Exchange believes the proposed reduction in the fee for executions of Removed Retail Volume (i.e., \$0.0002 per share lower than the standard fee for Removed Volume) is not excessive and is instead reasonably related to the market quality benefits it is intended to achieve. The Exchange also believes that the proposed fee for executions of Removed Retail Volume is equitable and not unfairly discriminatory, as such fee would be charged uniformly to all executions of such orders for all Members.

The Exchange notes that volume-based incentives (such as Liquidity Provision Tiers, NBBO Setter Tiers, the Tape B Volume Tier, and DLI Tiers) have been widely adopted by exchanges (including the Exchange), and are reasonable, equitable, and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits or discount that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and the introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes

that Liquidity Provision 1, as modified by the proposed change to the rebate under such tier, NBBO Setter Tier 1, as modified by the proposed removal of the additive rebate as it applies towards executions with Fee Codes D and J and the proposed changes to the required criteria under such tier, Tape B Volume Tier 1, as modified by the proposed changes to the required criteria under such tier, and DLI Tier 1, as modified by the proposed change to the rebate and required criteria under such tier, are reasonable, equitable and not unfairly discriminatory for these same reasons, as such tiers would provide Members with an incremental incentive to achieve certain volume thresholds on the Exchange, are available to all Members on an equal basis, and, as described above, are designed to encourage Members to maintain or increase their order flow, including in the form of displayed, liquidity-adding, and/or NBBO-setting orders to the Exchange in order to qualify for an enhanced rebate for executions of Added Displayed Volume or Setter Volume, as applicable, thereby contributing to a deeper, more liquid and well balanced market ecosystem on the Exchange to the benefit of all Members and market participants. The Exchange also believes that such tiers reflect a reasonable and equitable allocation of fees and rebates, as the Exchange believes that the enhanced rebate for executions of Added Displayed Volume under the proposed modified Liquidity Provision Tier 1, Tape B Volume Tier 1 and DLI Tier 1, and the additive rebate for executions of Setter Volume under the proposed modified NBBO Setter Tier 1, each remain commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that each such tier is designed to achieve, as described above.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act²⁸ in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposal is intended to incentivize market participants to direct additional order flow to the Exchange, which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange to the benefit of all Members and market participants. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."²⁹

Intramarket Competition

²⁸ 15 U.S.C. 78f(b)(4) and (5).

²⁹ See supra note 27.

As discussed above, the Exchange believes that the proposal would maintain a tiered pricing structure that is still consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity and would incentivize market participants to direct additional order flow to the Exchange through volume-based tiers, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members, as well as enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants.

The Exchange does not believe that the proposed changes would impose any burden on intramarket competition because such changes will incentivize members to submit additional order flow, thereby contributing to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members as well as enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The opportunity to qualify for the modified Liquidity Provision Tiers, NBBO Setter Tiers, Tape B Volume Tier, and DLI Tiers, and thus receive the corresponding enhanced rebates or discounted fees, as applicable, would be available to all Members that meet the associated volume requirements in any month. As described above, the Exchange

believes that the required criteria under each such tier are commensurate with the corresponding rebate under such tier and are reasonably related to the enhanced liquidity and market quality that such tier is designed to promote. The Exchange does not believe that the proposed change to adopt a reduced fee for executions of Removed Retail Volume would impose any burden on intramarket competition because such changes will apply to all Members uniformly, in that the opportunity to qualify for the discounted fees is available to all Members that submit Retail Orders to the Exchange. For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

As noted above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Members have numerous alternative venues that they may participate on and direct their order flow to, including 15 other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 15.6% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly,

competitive forces constrain the Exchange's transaction fees and rebates and market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As described above, the proposed changes represent a competitive proposal through which the Exchange is seeking to incentivize market participants to direct additional order flow to the Exchange through volume-based tiers, which have been widely adopted by exchanges, including the Exchange. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing structures and incentives to market participants.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."³⁰ The fact that this market is competitive has also long been recognized by the courts. In NetCoalition v. SEC, the D.C. Circuit stated as follows: "[n]o one disputes that competition for order flow is 'fierce.' ... As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share

³⁰ See supra note 27.

percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'....".³¹ Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act,³² the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)

³¹ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSE-2006-21)).

³² 15 U.S.C. 78s(b)(3)(A)(ii).

of the Act to determine whether the proposed rule change should be approved or disapproved.³³

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1. Form of Notice of the Proposed Rule Change for Publication in the Federal Register.

Exhibit 5. Text of Proposed Fee Schedule.

³³ 15 U.S.C. 78s(b)(2)(B).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-MEMX-2024-39]

[Insert date]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Exchange's Fee Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on [insert date], MEMX LLC ("MEMX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members³ (the "Fee Schedule") pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately. The text of the proposed rule change is provided in Exhibit 5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 1.5(p).

received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to: (i) adopt a reduced fee for executions of Retail Orders⁴ in securities priced at or above \$1.00 per share that remove liquidity from the Exchange; (ii) modify the Liquidity Provision Tiers by eliminating the current Liquidity Provision Tier 1 and increasing the rebate for the current Liquidity Provision Tier 2, which will be renamed Liquidity Provision Tier 1; (iii) modify NBBO Setter Tier 1 by increasing the additive rebate that would apply to a qualifying Member's executions of certain transactions, eliminating the additive rebate that would apply to a qualifying Member's executions of other transactions, and modifying the required criteria under such tier; (iv) modify the Tape B Volume Tier 1 by modifying the criteria under such tier; and (v) modify the Displayed Liquidity Incentive (DLI) Tiers by increasing the rebate and modifying the criteria under Displayed Liquidity Incentive Tier 1.⁵

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee

⁴ A "Retail Order" means an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. See Exchange Rule 11.21(a).

⁵ The Exchange initially filed the proposed Fee Schedule changes on September 30, 2024 (SR-MEMX-2024-37). On October 2, 2024, the Exchange withdrew that filing and submitted this proposal.

levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly available information, no single registered equities exchange currently has more than approximately 15.6% of the total market share of executed volume of equities trading.⁶ Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow, and the Exchange currently represents approximately 2% of the overall market share.⁷ The Exchange in particular operates a “Maker-Taker” model whereby it provides rebates to Members that add liquidity to the Exchange and charges fees to Members that remove liquidity from the Exchange. The Fee Schedule sets forth the standard rebates and fees applied per share for orders that add and remove liquidity, respectively. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, which provides Members with opportunities to qualify for higher rebates or lower fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Removed Retail Volume Fee

The Exchange currently charges a standard fee of \$0.0030 per share for executions of orders in securities that remove liquidity from the Exchange (such orders,

⁶ Market share percentage calculated as of September 30, 2024. The Exchange receives and processes data made available through consolidated data feeds (i.e., CTS and UTDF).

⁷ Id.

“Removed Volume”). The Exchange now proposes to adopt a reduced fee of \$0.0028 per share for executions of Retail Orders in securities priced at or above \$1.00 per share that remove liquidity from the Exchange (such orders, “Removed Retail Volume”).⁸ As proposed, executions of Removed Retail Volume in securities priced below \$1.00 per share will be charged a fee of 0.28% of the total dollar value of the transaction, which is the same fee that is currently charged for all such executions.

The purpose of reducing the fee for executions of Removed Retail Volume is to incentivize Members to submit additional liquidity-removing Retail Orders to the Exchange, thereby contributing to a deeper and more liquidity market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. The Exchange notes that the proposed lower fee for executions of Removed Retail Volume (i.e. \$0.0028) is competitive with the fees charged for executions of liquidity-removing retail orders charged by other exchanges.⁹

Liquidity Provision Tiers

The Exchange currently provides a base rebate of \$0.0015 per share for executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange (such orders, “Added Displayed Volume”). The Exchange also currently offers Liquidity Provision Tiers 1-6 under which a Member may receive an

⁸ The Exchange notes that it currently provides free executions (i.e., the Exchange charges no fee and provides no rebate) for executions of Retail Orders with a time-in-force (“TIF”) instruction of Day, Good-‘til-Time (“GTT”), or Regular Hours Only (“RHO”) that remove liquidity from the Exchange upon entry into the System. It is not proposing to change that pricing as a part of this proposal and as such, this proposal shall only apply to Retail Orders with a TIF of Immediate-or-Cancel (“IOC”) or Fill-or-Kill (“FOK”).

⁹ See, e.g., the Cboe EDGX Exchange, Inc. equities trading fee schedule (available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/), indicating a fee of \$0.0030 per share for executions of retail orders that remove liquidity, and the MIAX Pearl Equities fee schedule (available at <https://www.miaxglobal.com/markets/us-equities/pearl-equities/fees>), indicating a fee of \$0.00285 per share for executions of retail orders that remove liquidity.

enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required volume criteria for each such tier. The Exchange now proposes to modify the Liquidity Provision Tiers by eliminating the current Liquidity Provision Tier 1, deleting a footnote associated with the current Liquidity Provision Tier 1 in the Exchange's Fee Schedule, and re-numbering the existing Liquidity Provision Tiers 2-6 as Liquidity Provision Tiers 1-5 (hereinafter referred to as such). The applicable rebates and required criteria under Liquidity Provision Tiers 1-5 would remain unchanged, except for the rebate provided under the renamed Liquidity Provision Tier 1, which the Exchange is proposing to increase, as further described below.

First, with respect to the existing Liquidity Provision Tier 1, the Exchange currently provides an enhanced rebate of \$0.0034 per share for executions of Added Displayed Volume in securities priced at or above \$1.00 for Members that either: (1) have an ADAV¹⁰ (excluding Retail Orders) that is equal to or greater than 0.50% of the TCV,¹¹ or (2) a Step-Up ADAV¹² from June 2024 (excluding Retail Orders) that is equal to or greater than 0.07% of the TCV in securities priced at or above \$1.00 per share and an ADAV that is equal to or greater than 0.20% of the TCV in securities priced at or above \$1.00 per share and a Remove ADV¹³ that is equal to or greater than 0.45% of the

¹⁰ As set forth on the Fee Schedule, "ADAV" means the average daily added volume calculated as the number of shares added per day, which is calculated on a monthly basis, and "Displayed ADAV" means ADAV with respect to displayed orders.

¹¹ As set forth on the Fee Schedule, "TCV" means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

¹² As set forth on the Fee Schedule, "Step-Up ADAV" means ADAV in the relevant baseline month subtracted from current ADAV.

¹³ As set forth on the Fee Schedule, "Remove ADV" means ADV with respect to orders that remove liquidity.

TCV. The Exchange now proposes to eliminate Liquidity Provision Tier 1, as the Exchange no longer wishes to, nor is it required to, maintain such tier.

With respect to the newly re-numbered Liquidity Provision Tier 1,¹⁴ the Exchange currently provides an enhanced rebate of \$0.0033 per share for executions of Added Displayed Volume in securities priced at or above \$1.00 per share for Members that qualify for such tier by achieving either: (1) an ADAV (excluding Retail Orders) that is equal to or greater than 0.40% of the TCV, or (2) an ADAV that is equal to or greater than 0.30% of the TCV in securities priced at or above \$1.00 per share and a Non-Displayed ADAV¹⁵ that is equal to or greater than 6,000,000 shares. The Exchange now proposes to increase the rebate for executions of Added Displayed Volume under Liquidity Provision Tier 1 to \$0.0034 per share. The Exchange is not proposing to change the criteria required to qualify for renamed Liquidity Provision Tier 1. The Exchange is also not proposing to change the rebate for executions of orders in securities priced below \$1.00 per share under such tier.

The tiered pricing structure for executions of Added Displayed Volume under the Liquidity Provision Tiers provides an incremental incentive for Members to strive for higher volume thresholds to receive higher enhanced rebates for such executions and, as such, is intended to encourage Members to maintain or increase their order flow, primarily in the form of liquidity-adding volume, to the Exchange, thereby contributing

¹⁴ The pricing for Liquidity Provision Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description “Added displayed volume, Liquidity Provision Tier 1” with a Fee Code of “B1”, “D1” or “J1”, as applicable, to be provided by the Exchange on the monthly invoices provided to Members.

¹⁵ As set forth on the Fee Schedule, “Non-Displayed ADAV” means ADAV with respect to non-displayed orders (including orders subject to Display-Price Sliding that receive price improvement when executed and Midpoint Peg orders).

to a deeper and more liquid market to the benefit of all Members and market participants. The Exchange believes that the Liquidity Provision Tiers, as modified by the proposed changes described above, reflect a reasonable and competitive pricing structure that is right-sized and consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity. Specifically, the Exchange believes that, after giving effect to the proposed changes described above, the rebate for executions of Added Displayed Volume provided under each of the Liquidity Provision Tiers 1-5 remains commensurate with the corresponding required criteria under each such tier and is reasonably related to the market quality benefits that each such tier is designed to achieve.

NBBO Setter Tier 1

The Exchange currently offers NBBO Setter Tier 1 under which a Member may receive an additive rebate of \$0.0002 per share for a qualifying Member's executions of Added Displayed Volume (other than Retail Orders) in securities priced at or above \$1.00 per share that establish the NBBO and have a Fee Code B¹⁶ (such orders, "Setter Volume"), and an additive rebate of \$0.0001 per share for executions of Added Displayed Volume (other than Retail Orders) that do not establish the NBBO (i.e., Fee Codes D and J)¹⁷ by achieving: (1) an ADAV with respect to orders with Fee Code B that is equal to or greater than 5,000,000 shares; or (2) an ADAV with respect to orders with

¹⁶ The Exchange notes that orders with Fee Code B include orders, other than Retail Orders, that establish the NBBO.

¹⁷ The Exchange notes that orders with Fee Code J include orders, other than Retail Orders, that establish a new BBO on the Exchange that matches the NBBO first established on an away market. Orders with Fee Code D include orders that add displayed liquidity to the Exchange but that are not Fee Code B or J, and thus, orders with Fee Code B, D or J include all orders, other than Retail Orders, that add displayed liquidity to the Exchange.

Fee Code B that is equal to or greater than 2,000,000 shares and an ADAV in securities priced at or above \$1.00 per share (excluding Retail Orders) that is equal to or greater than 0.30% of the TCV in securities priced at or above over \$1.00 per share. The Exchange now proposes to modify NBBO Setter Tier 1 by increasing the additive rebate that would apply to a qualifying Member's executions of Setter Volume (i.e. Fee Code B), eliminating the additive rebate that would apply to a qualifying Member's executions of Added Displayed Volume (other than Retail Orders) that have a Fee Code of D or J, and modifying the required criteria under such tier.

First, the Exchange proposes to increase the additive rebate under NBBO Setter Tier 1 to \$0.0003 per share for a qualifying Member's executions of Added Displayed Volume with a Fee Code of B. Additionally, the Exchange proposes to eliminate the additive rebate of \$0.0001 per share for a qualifying Member's executions with a Fee Code of D or J, and as such, the additive rebate under NBBO Setter Tier 1 as proposed will only apply to a qualifying Member's executions of Added Displayed Volume with a Fee Code of B. The Exchange notes that when the NBBO Setter Tier was originally implemented by the Exchange, the additive rebate similarly only applied to executions with a Fee Code B,¹⁸ and as such, the purpose of eliminating the additive rebate is to revert back to the former application, as well as for business and competitive reasons, as the Exchange believes the elimination of such additive rebate would allow the Exchange to focus on incentivizing Setter Volume with a higher rebate while also decreasing the Exchange's expenditures with respect to the Exchange's transaction pricing, which would enable the Exchange to redirect future resources and funding into other incentives and

¹⁸ See Securities Exchange Act Release No. 94394 (March 10, 2022), 87 FR 14923 (March 16, 2022) (SR-MEMX-2022-01).

tiers intended to incentive increased order flow.

Second, the Exchange is proposing to modify the required criteria under NBBO Setter Tier 1. As noted above, currently, a Member qualifies for such tier by achieving (1) an ADAV with respect to orders with Fee Code B that is equal to or greater than 5,000,000 shares; or (2) an ADAV with respect to orders with Fee Code B that is equal to or greater than 2,000,000 shares and an ADAV in securities priced at or above \$1.00 per share (excluding Retail Orders) that is equal to or greater than 0.30% of the TCV in securities priced at or above over \$1.00 per share. Now, the Exchange proposes to modify the required criteria under NBBO Setter Tier 1 such that a Member would now qualify for such tier by achieving an ADAV with respect to orders with a Fee Code B that is equal to or greater than 0.05% of the TCV. Thus, such proposed change modifies the Fee Code B ADAV criteria in the first alternative from a share-based ADAV to a percentage of the TCV ADAV, and eliminates the second alternative criteria altogether.

The Exchange believes that the proposed modified criteria provides an incremental incentive for Members to strive for higher ADAV in NBBO setting orders (i.e. Fee Code B) on the Exchange to receive the additive rebate for qualifying executions of Added Displayed Volume under such tier, and thus, it is designed to encourage Members that do not currently qualify for such tier to increase their overall orders that add liquidity to the Exchange. The Exchange also believes that the criteria change reflects a reasonable and competitive pricing structure that is right-sized and consistent with the Exchange's overall pricing philosophy of encouraging added and/or displayed liquidity. The Exchange believes that the proposed modified criteria would further incentivize increased order flow to the Exchange, thereby contributing to a deeper and

more liquid market to the benefit of all Members.

Tape B Volume Tier

The Exchange currently offers Tape B Volume Tier 1 under which a Member may receive an additive rebate of \$0.0002 per share for executions of Added Displayed Volume (excluding Retail Orders) in Tape B Securities (such orders, “Tape B Volume”) by achieving a Tape B ADAV that is equal to or greater than 0.30% of the Tape B TCV (excluding Retail Orders).¹⁹ Now, the Exchange proposes to modify the required criteria under such tier such that a Member would qualify for such tier by achieving a Tape B ADAV that is equal to or greater than 0.25% of the Tape B TCV (excluding Retail Orders).

The purpose of modifying the required criteria is for business and competitive reasons, as the Exchange believes that such changes would facilitate Members to meet such tier by lowering the Tape B TCV requirement. The Exchange believes that the proposed changes would incentivize Members to submit additional order flow in Tape B Securities, thereby promoting price discovery and market quality on the Exchange.

Displayed Liquidity Incentive (“DLI”) Tiers

The Exchange currently offers DLI Tiers 1 and 2 under which a Member may receive an enhanced rebate for executions of Added Displayed Volume by achieving the corresponding required criteria for each such tier. The DLI Tiers are designed to encourage Members, through the provision of an enhanced rebate for executions of Added Displayed Volume, to promote price discovery and market quality by quoting at

¹⁹ The pricing for the Tape B Volume Tier is referred to by the Exchange on the Fee Schedule under the description “Tape B Volume Tier” with a Fee Code of “b” to be appended to the otherwise applicable Fee Code assigned by the Exchange on the monthly invoices for qualifying executions.

the NBBO for a significant portion of each day (i.e., through the applicable quoting requirement²⁰) in a broad base of securities (i.e., through the applicable securities requirement²¹), thereby benefitting the Exchange and investors by providing improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the NBBO in a broad base of securities and committing capital to support the execution of orders.²² Now, the Exchange proposes to modify DLI Tier 1 by modifying the required criteria and increasing the rebate for executions of Added Displayed Volume under such tier.

Currently, under DLI Tier 1, the Exchange provides a rebate of \$0.0031 per share for executions of Added Displayed Volume for Members that qualify for such tier by achieving: (1) an NBBO Time of at least 25% in an average of at least 1,000 securities per trading day during the month; and (2) an ADAV equal to or greater than 0.10% of the TCV. Now, the Exchange proposes to modify the required criteria under DLI Tier 1 such that a Member would qualify for such tier by achieving: an NBBO time of at least 50% in an average of at least 1,000 securities per trading day during the month.²³ The Exchange

²⁰ As set forth on the Fee Schedule, the term “quoting requirement” means the requirement that a Member’s NBBO Time be at least 25%, and the term “NBBO Time” means the aggregate of the percentage of time during regular trading hours during which one of a Member’s market participant identifiers (“MPIDs”) has a displayed order of at least one round lot at the national best bid or the national best offer.

²¹ As set forth on the Fee Schedule, the term “securities requirement” means the requirement that a Member meets the quoting requirement in the applicable number of securities per trading day. Currently, each of DLI Tiers 1 and 2 has a securities requirement that may be achieved by a Member meeting the quoting requirement in the specified number of securities traded on the Exchange.

²² See the Exchange’s Fee Schedule (available at <https://info.memxtrading.com/fee-schedule/>) for additional details regarding the Exchange’s DLI Tiers. See also Securities Exchange Act Release No. 92150 (June 10, 2021), 86 FR 32090 (June 16, 2021) (SR-MEMX-2021-07) (notice of filing and immediate effectiveness of fee changes adopted by the Exchange, including the adoption of DLI).

²³ The Exchange is also proposing to amend the definition of “quoting requirement” under the

also proposes to increase the rebate for a qualifying Members' executions of Added Displayed Volume under DLI Tier 1 from \$0.0031 per share to \$0.0034 per share.²⁴

The purpose of increasing the quoting requirement under DLI Tier 1 is intended to encourage Members to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day (i.e., through the applicable quoting requirement) in a large number of securities, thereby benefitting the Exchange and investors by providing improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the NBBO. The purpose of removing the former criteria (2) under DLI Tier 1 is intended to make it easier for Members to meet such tier and incentivize increased order flow to the Exchange in the form of orders at the NBBO. The purpose of increasing the rebate is similarly to incentivize increased order flow to the Exchange, including in the form of orders at the NBBO, thereby contributing to a deeper and more liquid market to the benefit of all market participants. The Exchange is not proposing to change the rebates provided under such tiers for executions of orders in securities priced below \$1.00 per share.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,²⁵ in general, and with Sections 6(b)(4) and 6(b)(5) of

Definitions and Notes section under the DLI Tiers pricing table on the fee schedule in light of this proposed increase in the NBBO time required to achieve DLI Tier 1. Specifically, the Exchange is proposing that the term quoting requirement shall now mean the percentage of NBBO Time required under the relevant DLI Tier criteria (i.e., rather than including the numeric value of the required NBBO Time in the definition).

²⁴ The pricing for DLI Tier 1 is referred to by the Exchange on the Fee Schedule under the existing description "Added displayed volume, DLI Tier 1" with a Fee Code of Bq1, Bq1 or Jq1, as applicable.

²⁵ 15 U.S.C. 78f.

the Act,²⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange operates in a highly fragmented and competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and also recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁷

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange’s transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and

²⁶ 15 U.S.C. 78f(b)(4) and (5).

²⁷ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

competitive pricing structure designed to encourage market participants to strive for higher volume on the Exchange, which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange to the benefit of all Members and market participants.

The Exchange believes that its proposal to charge a reduced fee for executions of Removed Retail Volume is reasonable, equitable, and not unfairly discriminatory. Specifically, the Exchange believes such proposal is reasonable, as it is reasonably designed to incentivize Members to submit additional Retail Orders to the Exchange, thereby contributing to a deeper and more liquidity market to the benefit of all market participants and enhancing the attractiveness of the Exchange as a trading venue. Thus, the Exchange believes the proposal reflects a reasonable attempt to deepen liquidity on the Exchange, particularly as the Exchange believes the proposed reduction in the fee for executions of Removed Retail Volume (i.e., \$0.0002 per share lower than the standard fee for Removed Volume) is not excessive and is instead reasonably related to the market quality benefits it is intended to achieve. The Exchange also believes that the proposed fee for executions of Removed Retail Volume is equitable and not unfairly discriminatory, as such fee would be charged uniformly to all executions of such orders for all Members.

The Exchange notes that volume-based incentives (such as Liquidity Provision Tiers, NBBO Setter Tiers, the Tape B Volume Tier, and DLI Tiers) have been widely adopted by exchanges (including the Exchange), and are reasonable, equitable, and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits or discount that are reasonably related to the value to an

exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and the introduction of higher volumes of orders into the price and volume discovery process. The Exchange believes that Liquidity Provision 1, as modified by the proposed change to the rebate under such tier, NBBO Setter Tier 1, as modified by the proposed removal of the additive rebate as it applies towards executions with Fee Codes D and J and the proposed changes to the required criteria under such tier, Tape B Volume Tier 1, as modified by the proposed changes to the required criteria under such tier, and DLI Tier 1, as modified by the proposed change to the rebate and required criteria under such tier, are reasonable, equitable and not unfairly discriminatory for these same reasons, as such tiers would provide Members with an incremental incentive to achieve certain volume thresholds on the Exchange, are available to all Members on an equal basis, and, as described above, are designed to encourage Members to maintain or increase their order flow, including in the form of displayed, liquidity-adding, and/or NBBO-setting orders to the Exchange in order to qualify for an enhanced rebate for executions of Added Displayed Volume or Setter Volume, as applicable, thereby contributing to a deeper, more liquid and well balanced market ecosystem on the Exchange to the benefit of all Members and market participants. The Exchange also believes that such tiers reflect a reasonable and equitable allocation of fees and rebates, as the Exchange believes that the enhanced rebate for executions of Added Displayed Volume under the proposed modified Liquidity Provision Tier 1, Tape B Volume Tier 1 and DLI Tier 1, and the additive rebate for executions of Setter Volume under the proposed modified NBBO Setter Tier 1, each remain commensurate with the corresponding required criteria under each such tier and is

reasonably related to the market quality benefits that each such tier is designed to achieve, as described above.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act²⁸ in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers. As described more fully below in the Exchange's statement regarding the burden on competition, the Exchange believes that its transaction pricing is subject to significant competitive forces, and that the proposed fees and rebates described herein are appropriate to address such forces.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the proposal is intended to incentivize market participants to direct additional order flow to the Exchange, which the Exchange believes would promote price discovery and enhance liquidity and market quality on the Exchange to the benefit of all Members and market participants. As a result, the Exchange believes the proposal would enhance its competitiveness as a market that attracts actionable orders, thereby making it a more desirable destination venue for its customers. For these reasons, the Exchange believes that the proposal furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more

²⁸ 15 U.S.C. 78f(b)(4) and (5).

efficient pricing of individual stocks for all types of orders, large and small.”²⁹

Intramarket Competition

As discussed above, the Exchange believes that the proposal would maintain a tiered pricing structure that is still consistent with the Exchange’s overall pricing philosophy of encouraging added and/or displayed liquidity and would incentivize market participants to direct additional order flow to the Exchange through volume-based tiers, thereby enhancing liquidity and market quality on the Exchange to the benefit of all Members, as well as enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants.

The Exchange does not believe that the proposed changes would impose any burden on intramarket competition because such changes will incentivize members to submit additional order flow, thereby contributing to a more robust and well-balanced market ecosystem on the Exchange to the benefit of all Members as well as enhancing the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants.

²⁹ See supra note 27.

The opportunity to qualify for the modified Liquidity Provision Tiers, NBBO Setter Tiers, Tape B Volume Tier, and DLI Tiers, and thus receive the corresponding enhanced rebates or discounted fees, as applicable, would be available to all Members that meet the associated volume requirements in any month. As described above, the Exchange believes that the required criteria under each such tier are commensurate with the corresponding rebate under such tier and are reasonably related to the enhanced liquidity and market quality that such tier is designed to promote. The Exchange does not believe that the proposed change to adopt a reduced fee for executions of Removed Retail Volume would impose any burden on intramarket competition because such changes will apply to all Members uniformly, in that the opportunity to qualify for the discounted fees is available to all Members that submit Retail Orders to the Exchange. For the foregoing reasons, the Exchange believes the proposed changes would not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intermarket Competition

As noted above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. Members have numerous alternative venues that they may participate on and direct their order flow to, including 15 other equities exchanges and numerous alternative trading systems and other off-exchange venues. As noted above, no single registered equities exchange currently has more than approximately 15.6% of the total market share of executed volume of equities trading. Thus, in such a low-concentrated and highly competitive

market, no single equities exchange possesses significant pricing power in the execution of order flow. Moreover, the Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to new or different pricing structures being introduced into the market. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates and market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As described above, the proposed changes represent a competitive proposal through which the Exchange is seeking to incentivize market participants to direct additional order flow to the Exchange through volume-based tiers, which have been widely adopted by exchanges, including the Exchange. Accordingly, the Exchange believes the proposal would not burden, but rather promote, intermarket competition by enabling it to better compete with other exchanges that offer similar pricing structures and incentives to market participants.

Additionally, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."³⁰ The fact that this market is competitive has also long been

³⁰ See supra note 27.

recognized by the courts. In NetCoalition v. SEC, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”³¹ Accordingly, the Exchange does not believe its proposed pricing changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act³² and Rule 19b-4(f)(2)³³ thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine

³¹ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSE-2006-21)).

³² 15 U.S.C. 78s(b)(3)(A)(ii).

³³ 17 CFR 240.19b-4(f)(2).

whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MEMX-2024-39 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-MEMX-2024-39. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street

NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-MEMX-2024-39 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

Sherry R. Haywood,

Assistant Secretary.

³⁴ 17 CFR 200.30-3(a)(12).

Exhibit 5

Proposed new language is underlined; Proposed deletions are in [brackets].

**MEMX Equities Fee Schedule
(EFFECTIVE [SEPTEMBER 6]OCTOBER 2, 2024)**

Transaction Fees

MEMX Members are charged per share fees or provided per share rebates based on shares executed within each of the fee code categories below.

Fee Code	Description	Fee/(Rebate) - Securities at or above \$1.00 ("A")	Fee/(Rebate) - Securities below \$1.00 ("B")
B, D, J or I*	Added displayed volume	\$(0.0015)	(0.075% of total dollar value)
B1, D1, J1 or I1	Added displayed volume, Liquidity Provision Tier 1	\$(0.0034)	(0.075% of total dollar value)
B2, D2, J2 or I2	Added displayed volume, Liquidity Provision Tier 2	\$(0.0032 [3])	(0.075% of total dollar value)
B3, D3, J3 or I3	Added displayed volume, Liquidity Provision Tier 3	\$(0.0030 [2])	(0.075% of total dollar value)
B4, D4, J4 or I4	Added displayed volume, Liquidity Provision Tier 4	\$(0.0029 [30])	(0.075% of total dollar value)
B5, D5, J5 or I5	Added displayed volume, Liquidity Provision Tier 5	\$(0.0025 [9])	(0.075% of total dollar value)
[B6, D6, J6 or I6	Added displayed volume, Liquidity Provision Tier 6	\$(0.0025)	(0.075% of total dollar value)]
Bq1, Dq1, Jq1 or Iq1	Added displayed volume, DLI Tier 1	\$(0.0034 [1])	(0.075% of total dollar value)
Bq2, Dq2, Jq2 or Iq2	Added displayed volume, DLI Tier 2	\$(0.0026)	(0.075% of total dollar value)

Br, Dr or Jr	Added displayed volume, Retail Order	\$(0.0034)	(0.15% of total dollar value)
Br1, Dr1 or Jr1	Added displayed volume, Retail Tier 1	\$(0.0037)	(0.15% of total dollar value)
BO1, DO1, JO1 or IO1	Added displayed volume, Cross Asset Tier 1	\$(0.0033)	(0.075% of total dollar value)
BO2, DO2, JO2 or IO2	Added displayed volume, Cross Asset Tier 2	\$(0.0027)	(0.075% of total dollar value)
BO3, DO3, JO3 or IO3	Added displayed volume, Cross Asset Tier 3	\$(0.0026)	(0.075% of total dollar value)
P	Added volume, order subject to Display-Price Sliding that receives price improvement when executed	\$(0.0008)	(0.075% of total dollar value)
H	Added non-displayed volume	\$(0.0008)	(0.075% of total dollar value)
M	Added non-displayed volume, Midpoint Peg	\$(0.0008)	(0.075% of total dollar value)
H1, M1, P1	Added non-displayed volume, Non-Display Add Tier 1	\$(0.0028)	(0.075% of total dollar value)
H2, M2, P2	Added non-displayed volume, Non-Display Add Tier 2	\$(0.0025)	(0.075% of total dollar value)
R	Removed volume from MEMX Book	\$0.0030	0.28% of total dollar value
R1	Removed volume from MEMX Book, Liquidity Removal Tier 1	\$0.0029	0.28% of total dollar value
<u>RrA</u>	<u>Removed volume from MEMX Book, Retail Order</u>	<u>\$0.0028</u>	<u>0.28% of total dollar value</u>
Rr0	Removed volume from MEMX Book upon entry, Retail Order (Day/GTT/RHO)	Free	Free
Z	Routed to another market, removed liquidity	\$0.0030	0.30% of total dollar value

*Fee Code B includes orders, other than Retail Orders, that establish the NBBO. Fee Code D includes orders, other than Retail Orders, that add displayed liquidity to the Exchange but do not establish or join the NBBO. Fee Code J includes orders, other than Retail Orders, that establish a new BBO on the Exchange that matches the NBBO first established on an away market. Fee Code I is assigned to a Member's "P" orders if that Member meets the criteria under Display-Price Sliding Tier 1.

* * * * *

Liquidity Provision Tiers

Tier	Rebate Per Share	Required Criteria
[Tier 1	\$(0.0034)	(1) Member has an ADAV (excluding Retail Orders) \geq 0.50% of the TCV; or (2) Member has a Step-Up ADAV from June 2024 (excluding Retail Orders) \geq 0.07% of the TCV in securities priced at or above \$1.00 per share and an ADAV \geq 0.20% of the TCV in securities priced at or above \$1.00 per share and a Remove ADV \geq 0.45% of the TCV *]
Tier 1[2]	\$(0.0034[3])	(1) Member has an ADAV (excluding Retail Orders) \geq 0.40% of the TCV; or (2) Member has an ADAV \geq 0.30% of the TCV in securities priced at or above \$1.00 per share and a Non-Displayed ADAV \geq 6,000,000 shares
Tier 2[3]	\$(0.0032)	(1) Member has an ADAV \geq 0.20% of the TCV in securities priced at or above \$1.00 per share and an ADV \geq 0.40% of the TCV in securities priced at or above \$1.00 per share; or (2) Member has a Step-Up ADAV from June 2024 (excluding Retail Orders) \geq 0.05% of the TCV in securities priced at or above \$1.00 per share and an ADAV (excluding Retail Orders) \geq 0.20% of the TCV in securities priced at or above \$1.00 per share*[*]; or (3) Member has an ADAV \geq 0.30% of the TCV
Tier 3[4]	\$(0.0030)	(1) Member has an ADAV \geq 0.20% of the TCV in securities priced at or above \$1.00 per share; or (2) Member has an ADAV \geq 0.175% of the TCV
Tier 4[5]	\$(0.0029)	Member has an ADAV (excluding Retail Orders) \geq 0.09% of the TCV
Tier 5[6]	\$(0.0025)	Member has an ADAV \geq 0.06% of the TCV

[*Criteria (2) of Liquidity Provision Tier 1 will expire no later than December 31, 2024.]

[] Criteria (2) of Liquidity Provision Tier 2[3] will expire no later than December 31, 2024.

* * * * *

NBBO Setter Tier

Tier	Additive Rebate Per Share*	Required Criteria
Tier 1	\$(0.0003[2]) for Fee Code B[, and \$(0.0001) for Fee Codes D and J]	[(1)]Member has an ADAV with respect to orders with Fee Code B \geq 0.05% of the TCV[5,000,000 shares; or (2) Member has an ADAV with respect to orders with Fee Code B \geq 2,000,000 shares and an ADAV in securities priced at or above \$1.00 per share (excluding Retail Orders) \geq 0.30% of the TCV in securities priced at or above \$1.00 per share]

*Rebate is in addition to otherwise applicable rebate for executions of added displayed volume (other than Retail Orders) in securities priced at or above \$1.00 per share that establish the NBBO. MEMX will append Fee Code “S1” (for Tier 1) to the otherwise applicable Fee Code for qualifying executions.

* * * * *

Tape B Volume Tier

Tier	Additive Rebate Per Share*	Required Criteria
Tier 1	\$(0.0002)	Member has a Tape B ADAV \geq 0.25[30]% of the Tape B TCV (excluding Retail Orders)

*Rebate is in addition to otherwise applicable rebate for executions of added displayed volume (excluding Retail Orders) in securities priced over \$1.00 per share. MEMX will append the Fee Code “b” to the otherwise applicable Fee Code for qualifying executions.

* * * * *

Displayed Liquidity Incentive (DLI) Tiers

Tier	Rebate Per Share	Required Criteria
Tier 1	\$(0.0034[1])	Member has [(1)] an NBBO Time of at least [25]50% in an average of at least 1,000 securities per trading day during the month[; and (2) an ADAV \geq 0.10% of the TCV]

Tier 2	\$(0.0026)	Member has an NBBO Time of at least 25% in an average of at least 500 securities per trading day during the month
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Definitions and Notes

For purposes of this section, the terms set forth below shall have the following meanings:

1. The term “MPID” shall mean market participant identifier.
2. The term “NBBO Time” shall mean the aggregate of the percentage of time during regular trading hours during which one of a Member’s MPIDs has a displayed order of at least one round lot at the national best bid or the national best offer.
3. The term “quoting requirement” shall mean the percentage of NBBO Time required under the relevant DLI Tier criteria[requirement that a Member’s NBBO Time be at least 25%].
4. The term “regular trading hours” shall mean the time between 9:30 a.m. and 4:00 p.m. Eastern Time, or such shorter period as may be designated by the Exchange on a day when the securities markets close early.
5. The term “securities requirement” shall mean the requirement that a Member meets the quoting requirement in the applicable number of securities per trading day.

On a daily basis, MEMX will determine the number of securities in which each of a Member’s MPIDs meets the quoting requirement for that day. MEMX will aggregate the number of securities in which each of a Member’s MPIDs meets the quoting requirement to determine the number of securities in which such Member meets the quoting requirement for that day, provided that a single security in which more than one of such Member’s MPIDs meets the quoting requirement for that day will only be counted once for this purpose. The quoting requirement with respect to a security must be met by a single MPID and MEMX will not aggregate the NBBO Time across all of a Member’s MPIDs to determine if the quoting requirement has been met.

In order to determine whether a Member meets the applicable securities requirements during a month, the average number of securities in which such Member meets the quoting requirement per trading day during the month will be calculated by summing the number of securities in which each of such Member’s MPIDs met the quoting requirement for each trading day during the month then dividing the resulting sum by the total number of trading days in the month. With prior notice to the Exchange, a Member may aggregate the quoting activity (but not the NBBO Time) of its MPIDs, consistent with the above, with that of the MPIDs of other Members that control, are controlled by, or are under common control with such Member (as evidenced on such Member’s Form BD).

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